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Via Certified Mail -
Return Receipt Requested

March 8, 2019

Ms. Renee Robinson, Remediation Specialist
NuStar Energy L.P.
2330 North Loop 1604 West
San Antonio, TX 78278

Dan Thomas, Terminal Manager
Managing Agent
NuStar Terminals Operations Partnership L.P.
2941 Navy Drive
Stockton, CA 95206

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act (Clean Water Act)

Dear Ms. Robinson, Mr. Thomas, and Managing Agent:

On behalf of California River Watch ("River Watch"), this letter provides statutory notification to NuStar Energy L.P., and NuStar Terminal Operations Partnership L.P. ("NuStar") of continuing and ongoing violations of the Federal Clean Water Act ("CWA" or "Act"; 33 U.S.C. § 1251 et seq.) that River Watch alleges are occurring through the ownership and/or operation of the bulk fuel terminal site located at 2941 Navy Drive in Stockton, California (the "Site").

River Watch hereby places NuStar, as owner and operator of the Site, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against NuStar for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Central Valley Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges of pollutants to a water of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The

effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges Nustar violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a), 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating NuStar's operations in the region at issue in this Notice is the Regional Water Quality Control Board, Central Valley Region ("RWQCB"). NuStar currently has no NPDES Permit authorizing the discharge of pollutants to waters of the United States.

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by NuStar with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

River Watch identifies discharges of petroleum hydrocarbons, additives and breakdown products from the Site, through discrete conveyances or preferential pathways, which have caused these pollutants to be discharged to groundwater and surface waters via conduits such as pipelines, storm drains, utilities and the like, facilitating pollutant migration and discharge to waters of the State of California and waters of the United States without an NPDES permit. Said discharges are in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

2. The Activity Alleged to Constitute a Violation

River Watch contends that from November 8, 2013 to November 8, 2018, NuStar has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Discharge of Pollutants to Surface Waters via Hydrologically-Connected Groundwater

Notwithstanding NuStar's contention that the petroleum hydrocarbon plume on the Site is defined and that concentrations of constituents of concern are decreasing over time, a careful review of the groundwater monitoring reports tells a different story.

A letter from the RWQCB to NuStar dated June 3, 2014 contains the following:

> Although NuStar conducts groundwater sampling events on a similar time frame as the adjacent fuel terminals, it does not include the data on the isoconcentration figures. NuStar needs to coordinate future sampling events with STTC and KMEP and include the data on the isoconcentration contours. NuStar continues to conclude that the petroleum hydrocarbon plume is defined; however, in the monitoring reports it is difficult to differentiate the extent of the northern portion of the NuStar plume(s) from the KMEP plume(s) or the southern portion of the STTC plume(s). The next semiannual report is due 1 November and should include data for all Port of Stockton Sites, including the lateral delineation of each petroleum hydrocarbon plume.
>
> The Report states that the groundwater data show generally stable or decreasing concentrations. NuStar concludes the slight increases in concentrations in ST/MW-1 and PS/MW-14 are typical of historical fluctuations associated with seasonal groundwater levels. Central Valley Water Board staff is concerned with the recent increases in these monitoring wells. The February 2014 TPHd concentration in PS/MW-14, 27,000 µg/l, is the second greatest concentration ever reported in that well (the greatest concentration was 28,000 µg/L in February 2012). In addition, PS/P-12 (downgradient of PS/MW-14) contains the first detections of TPHd since 2010 at 4,000 µg/L. These wells are along the eastern border of the tank farm and NuStar needs to continue to monitor and evaluate these concentration trends.

The June 6, 2018 Groundwater monitoring report shows MTBE concentration of 284,000 ug/L in ST/MW-1, TPH concentration of 39,700 ug/L in PSP-12, and TPH concentration of 84.900 ug/L in ST/MW-1. The Site is only 1200 feet from the San Joaquin River and 290 feet from an adjacent, unlined pond located 100 feet from the River. The soil in the area is porous. The San Joaquin River is downgradient from the Site. The pond qualifies as an adjacent wetland to the River - legally a tributary under the CWA. It is a virtual certainty that these pollutants are reaching the pond and the San Joaquin River via the highly polluted, hydrologically-connected groundwater.

B. Surface Discharges From the Site to the San Joaquin River

Currently, 21 primary, above-ground storage tanks exist in containment areas formed by earthen berms on the Site. Most of the piping to the tanks is above ground. Numerous of these tanks store gasoline and diesel received via pipeline. Ethanol is stored in an 80,000-barrel storage tank. Oxygenates are trucked in and stored in a 1,000 gallon tank.

There is a history of major gasoline releases from above-ground storage tanks on the Site. The above-ground storage tanks and piping are point sources under the CWA. The roads, storm drains and utilities at and adjacent to the Site are conduits which have caused pollutants to be conveyed from the Site to the downgradient pond and San Joaquin River. River Watch has found no record of surface water testing of the San Joaquin River or the hydrologically-connected pond. Geotracker lists Surface Water as a potential medium of concern. The chemicals of concern identified in sampling further described in this Notice are as follows:

MTBE - A growing number of studies have detected MTBE in groundwater throughout the country. In some instances these contaminated waters are sources of drinking water. Low levels of MTBE can make drinking water supplies undrinkable due to its offensive taste and odor. Some research animals inhaling high concentrations of MTBE have developed cancers or experienced other non-cancerous health effects.

The EPA's Office of Water has concluded that available data is inadequate to estimate the potential health risks of MTBE at low exposure levels in drinking water, but that the data does support the conclusion that MTBE is a potential human carcinogen in high doses. Recent work by the EPA and other researchers is expected to help determine more precisely the potential for health effects from MTBE in drinking water. The EPA reviewed available health effects information on MTBE in its 1997 Drinking Water Advisory Guidance and determined there was insufficient information available to establish quantitative estimates for health risks. As such, the EPA declined to set health advisory limits. The drinking water advisory document indicates there is little likelihood that MTBE in drinking water will cause adverse health effects at concentrations between 20 and 40 ppb or below.

Sampling results at the Site show MTBE levels as high as 200 ug/L. Results of MTBE sampling at the Site in 2018 include the following:

02/06/2018 - monitoring well ACA-3AB - 85.8 ug/L
02/06/2018 - monitoring well ST/MW-1 - 284000 ug/L

Benzene - Benzene is a recognized carcinogen at levels exceeding maximum contaminant levels ("MCL"). The California MCL for Benzene is .001. Results of Benzene sampling at the Site in 2018 include the following:

02/06/2018 - monitoring well PS/MW-14 - 6140 ug/L
02/14/2018 - monitoring well ACA-1A - 72.9 ug/L
02/15/2018 - monitoring well PS/MW-14 - 5470 ug/L.

Toluene - The California MCL for Toluene is 0.15 ug/L. Results of Toluene sampling at the Site in 2018 include the following:

02/14/2018 - monitoring well ST/MW-1 - 738 ug/L
02/14/2018 - monitoring well PS/MW-14 - 123 ug/L.

Ethylbenzene - Acute (short-term) exposure to ethylbenzene in humans results in respiratory effects such as throat irritation, chest constriction, irritation of the eyes, and neurological effects such as dizziness. Chronic (long-term) exposure to ethylbenzene via inhalation in humans has shown conflicting results regarding its effects on the blood.

The California MCL for ethylbenzene is 0.3 ug/L. Results of ethylbenzene sampling at the Site in 2018 include the following:

02/14/2018 - monitoring well PS/P-12 - 1730 ug/L
02/14/2018 - monitoring well ST/MW-1 - 494 ug/L.

The California MC/L for ethylbenzene is 0.3 ug/L. Results of ethylbenzene sampling at the Site in 2018 include the following:

02/14/2018 - monitoring well PS/P-12 - 1730 ug/L
02/14/2018 - monitoring well ST/MW-1 - 494 ug/L.

Xylenes - The principal pathway for human contact with xylene is via soil contamination from leaking underground storage tanks containing petroleum products. Xylene can leak into the soil, surface water, or groundwater where it may remain for months or more before it breaks down into other chemicals. Exposure to xylene can occur via inhalation, ingestion, and eye or skin contact. It is primarily metabolized in the liver by oxidation of a methyl group and conjugation with glycine to yield methyl hippuric acid which is excreted in the urine. Smaller amounts are eliminated unchanged in the exhaled air. There is a low potential for accumulation. Xylene causes health effects from both acute and chronic exposure. The type and severity of health effects depend on several factors including the amount of chemical exposure and the length of exposure time. Individuals react differently to different levels of exposure. Long-term exposure may lead to headaches, irritability, depression, insomnia, agitation, extreme tiredness, tremors, impaired concentration, and short-term memory. This condition is sometimes generally referred to as "organic solvent syndrome."

The California MC/L for Xylenes is 1.75 ug/L. Results of Xylenes sampling at the Site in 2018 include the following:

02/14/2018 - monitoring well PS/MW-14 - 126 ug/L
02/14/2028 - monitoring well ST/MW-1 - 1340 ug/L
02/15/2018 - monitoring well PS/P-12 - 7540 ug/L.

TPH - Results of TPH sampling at the Site in 2018 include the following:

02/14/2018 - monitoring well PS/P-12 - 39700 ug/L
02/14/2018 - monitoring well PSP/MW-14 - 16700 ug/L
02/14/2018- monitoring well ST/MW-1 - 84,900 ug/L.

From a review of the NuStar engineering reports and geology of the Site, it is clear that pollutants have reached surface waters and are continuing to discharge to waters of the United States. NuStar does not have a NPDES permit which would allow such discharges.

3. The Person or Persons Responsible for the Alleged Violation

The entities responsible for the alleged violations identified in this Notice are NuStar Energy L.P., and NuStar Terminal Operations Partnership L.P.

4. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activities Occurred

The range of dates covered by this Notice is November 8, 2013 to November 8, 2018. River Watch contends these violations are continuing or have a likelihood of occurring in the future. As these violations are continuous, River Watch contends each day constitutes a violation.

5. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters are located in Sebastopol. Its mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

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BACKGROUND

The Site is located within the Port of Stockton terminal leasehold (the "leasehold") which consists of a triangular plot of land bounded on the north by West Washington Street, on the west by Navy Drive, and on the east by Stork Road.

NuStar currently owns and operates a bulk fuel facility and terminal on the Site. Separate Phase Hydrocarbons ("SPH") were observed in well ST/MW between 1992 and 1994. Gasoline releases occurred from AST No. 3301 in March of 2002. An additional gasoline release occurred from AST No. 3302 in April of 2002. Six months following the release, 2.3 feet of SPH was observed in well ST/MW-1. One thousand gallons of diesel was released from AST No. 1503 in June of 2002 necessitating the excavation and removal of fuel-impacted soil.

The Site has been used as a fuel distribution facility since the 1960's. Prior operators within the leasehold included ARCO/BP, Time Oil, Tesoro, and Santa Fe Pacific Pipeline. ARCO/BP, Time Oil, and Tesoro are a part of the Stockton Terminals Technical Committee and are participating in joint groundwater monitoring, investigation, and remedial activities for the northern portion of the leasehold. NuStar was a part of the Stockton Terminals Technical Committee from its inception in 1992 until 2004, and participated in the leasehold investigations, pilot studies for remedial actions, and groundwater monitoring. In February of 2004, NuStar determined that because the petroleum impacts associated with the Site are limited to the southern portion of the leasehold, it would be more efficient to conduct groundwater monitoring and remedial actions outside of the Stockton Terminals Technical Committee.

Although sampling in Zone A and C monitoring wells continues on the Site at the direction of the RWQCB, it does not appear that contamination at the Site has been completely delineated horizontally and vertically.

Early investigations in the vicinity of the Site identified a series of 4 hydrogeologic zones defined as the A-, B-, C-, and D-zones. These zones have historically been described as hydrogeologically independent and have been primarily defined in terms of depths encountered. However, according to the vertical groundwater investigation (Ash Creek, 2009a), "some of the water bearing zones are not as confined as previously reported..." Extensive lithologic data obtained during this vertical groundwater investigation resulted in reclassifying former C-zone sands in the northern portion of the Facility, as D-zone sands." (NuStar Investigation Summary Report, pg. 3).

A RWQCB letter dated February 20, 2013 to NuStar states, "The 15 September 1998 Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan) considers all groundwater to be a potential drinking water source and requires cleanup to background concentrations, if technically and economically feasible."

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring Nustar into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Site:

1. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective Water Quality Objectives for NuStar's continuing discharges to groundwater and surface waters.

2. River Watch seeks engineering assurances that the underlying aquifers are not at risk, and that residual contamination at the Site is prevented from continuing to migrate to groundwater and surface waters in the area. Proactive remediation using best available technology must be implemented, and greater efforts to estimate the residual plume mass and the amount of time necessary to remediate the Site must be accomplished in keeping with standard cleanup protocols in the industry.

3. Surface water sampling of the pond and the San Joaquin River downgradient of the pond.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use and intend to use the affected watershed for recreation, fishing, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Nustar's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $54,833.00 per day/per violation for violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a 60-day "notice period" to promote resolution of disputes. River Watch encourages Nustar to contact counsel for River Watch within twenty (20) days of receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jerry Bernhaut

Jerry Bernhaut, Esq.

JB:lhm

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